

Number of Cases**Total Number of Invalidation Cases****146****Fact Patterns of Cases With Inconsistent Filings**

Attempted common parent election. However, subsidiaries had already filed inconsistently.	7
The original return is defined as the first return received after the original due date and before the extended due date when a taxpayer has obtained an extension to file its return. The return with the water's-edge election was not the taxpayer's original return. All taxpayer members of the water's-edge group had extensions to file their returns.	3
The original return is defined as the return received closest to the original due date when a taxpayer has not obtained an extension to file its return. The return with the water's-edge election was not the taxpayer's original return. Not all taxpayer members of the water's-edge group had extensions to file their returns.	1
This case involved 11 taxpayers. Nine taxpayers filed separate returns, computing the tax on a combined basis, and each elected water's-edge. Two entities, included in the combined report calculation, had already filed separately and did not elect water's-edge. The two entities amended their returns to elect. A common parent election was not attempted. Each taxpayer elected for itself.	1
Due to an audit in progress, application of deemed election rule likely.	1
No indication to elect water's-edge on the original returns. Taxpayers amended returns to elect.	1

Number of Inconsistent Filing Cases**14****Fact Patterns of Cases With No Contract to Elect on Original Return****132**

A water's-edge box was checked "yes" and at least one water's-edge form was attached to the original return. (Water's-edge forms includes: the contract (FTB 1115 or 100-WE), cover sheet (FTB 2426), fee related forms (100-FEE, 100-FEE-A, 100-FEE-A Schedule A, 100-FEE-V, 100-FEE-X), Water's-Edge Dividend Deduction (FTB 2411), Foreign Investment Interest Offset (FTB 2424), Domestic Disclosure Spreadsheet, or Notice of Nonrenewal)	59
The water's-edge box on page 1 was checked "yes". The water's-edge box on page 2 was left blank. This statement was attached to the original return: "Taxpayer hereby elects to be treated as a water's edge group. As the common parent of the controlled group, pursuant to Section 1501 of the Internal Revenue Code, the bank or corporation hereby contracts for all members of the federal group which are included in the water's-edge combined report. The following corporations are covered by this election: (4 taxpayers were listed here.)"	2
The water's-edge box on page 1 was checked "yes". The water's-edge box on page 2 was left blank. There was no other indication on the original return. (Taxpayer had not previously elected water's-edge.)	11

<u>Fact Patterns of Cases With No Contract to Elect on Original Return (Continued)</u>	<u>Number of Cases</u>
The water's-edge box on page 1 was checked "yes". The water's-edge box on page 2 was left blank. There was no other indication on the 9/94 original return. (Taxpayer had filed water's-edge in prior years, a Notice of Nonrenewal had been filed ending the election for 9/93.)	1
The water's-edge box on pages 1 and 2 were checked "yes". There was no other indication on the 9/94 original return. (Taxpayer had filed water's-edge in prior years and did not re-elect after the 1/1/94 law changes.)	1
The water's-edge box on page 1 was checked "no". The water's-edge box on page 2 was checked "yes". And, at least one water's-edge form was attached to the original return. One case involved a 12/90 election and a fee was not paid. The taxpayer properly elected for 12/91. Another case involved a 6/94 election and a fee was paid at the time of filing. The taxpayer properly elected for 6/95. A third case involved a 3/89 election and the fee was paid 2 years and 9 months after filing the return. The taxpayer properly elected for 3/92.	3
The water's-edge box on page 1 was checked "no". The water's-edge box on page 2 was checked "yes". There was no other indication on the original return. (Taxpayer had not previously elected water's-edge.) This case involved a 12/91 election and a fee was paid with the return filing. The taxpayer properly elected 12/94.	1
The water's-edge box on page 1 was checked "no". The water's-edge box on page 2 was left blank. And, at least one water's-edge form was attached to the original return.	10
The taxpayer left both water's-edge boxes blank and attached at least one water's-edge form to the original return. One case involved a 3/90 election and a fee (\$2) was paid with the return filing. The taxpayer did not subsequently elect. Another case involved a 3/91 election and a fee (\$4) was paid at the time of filing. The taxpayer did not subsequently elect.	2
This was a 1994 or a 1995 invalidation. The Form 100 had no water's-edge boxes to check. Taxpayer attached at least one water's-edge form to the original return.	8
This was a 1994 or a 1995 invalidation. The Form 100 had no water's-edge boxes to check. The only indication on the original return was a copy of a prior year's election.	3
No indication on the original return. Within 30 days of filing, taxpayer provided forms under separate cover. (Taxpayer had not elected water's-edge in prior years. Three of these four cases were income years after 1/1/94 law changes.)	4
No indication on the original return. Taxpayer amended to elect. (Taxpayer had not elected water's-edge in prior years.)	5
No indication on the original return. (Taxpayer had not elected water's-edge in prior years.)	2

<u>Fact Patterns of Cases With No Contract to Elect on Original Return (Continued)</u>	<u>Number of Cases</u>
<u>Invalidation Cases Otherwise Resolved</u>	
Because of an audit, the deemed election rule applied.	1
The statute of limitations for the income years effected by the invalidated election has expired. The taxpayer filed a valid water's-edge election in a subsequent year.	14
Taxpayer was given the opportunity to perfect a 1988 election but did not.	1
Taxpayer filed with modified contract terms. Taxpayer was asked if it wanted to perfect and the taxpayer did not want to perfect.	1
<u>Miscellaneous Cases</u>	
Cases where we do not have a return copy.	3
Number of No Contract Cases	132

Attachment A

Date Filed	Inc Yr	Taxpayer Filing(s):	W/E Contract Attached	Common Parent Election?
The following is a list of corporations that filed separate and did not make a water's-edge election:				
3/8/95	Dec-94	Taxpayer 1	No	
3/15/95	Dec-94	Taxpayer 2	No	
3/15/95	Dec-94	Taxpayer 3	No	
3/15/95	Dec-94	Taxpayer 4	No	
3/15/95	Dec-94	Taxpayer 5	No	
4/15/95	Dec-94	Taxpayer 6	No	
3/15/95	Dec-94	Taxpayer 7	No	
10/15/95	Dec-94	Taxpayer 8 filed a combined report which included the above taxpayers. Per Schedule R-7, there are 14 California taxpayers in the combined report.	Yes	Yes

In this return, Taxpayer 8 was making a
common parent election on behalf of the W/E group.
A statement attached to that return reads, in part:

"The (above) corporations which are included in this
combined report and are part of the unitary group,
previously filed separate 1994 California Corporation
Franchise Tax Returns (Form 100). Subsequently to the filings,
it was determined that they should be included in
this combined report for 1994."

Attachment B

Date Filed	Inc Yr	Taxpayer Filing(s):	W/E Contract Attached	Common Parent Election?
9/22/95	Dec-94	Taxpayer 1 filed a return on a separate company basis and did not elect water's-edge. However, Taxpayer 1 was included in the combined report filed by Taxpayer 2.	N	
10/15/95	Dec-94	Taxpayer 2 filed a return computing California taxable income on a combined basis. The combined report included Taxpayer 1. The water's-edge contract attached to this return included Taxpayer 1 as one of the subsidiaries covered by the water's-edge election.	Y	Y
10/24/96		A letter was mailed to the taxpayer indicating that water's-edge election was invalid and that the corporation should amend its return to report its California taxable income on a worldwide combined basis.		
8/11/97	12/94 & Dec-95	The taxpayer filed amended returns for IYE 12/94 and 12/95 on a worldwide basis. For IYE 12/94 the taxpayer is requesting a refund of \$800 and for IYE 12/95 there is no tax change.		

Attachment C

Date Filed	Inc Yr	Taxpayer Filing(s):	W/E Contract Attached	Common Parent Election?
5/15/93	Dec-92	Taxpayer 1 filed a return on a separate company basis and did not elect water's-edge. However, it was included in the combined report filed by Taxpayer 2.	N	
9/15/93	Dec-92	The combined report filed by Taxpayer 2 included a water's-edge contract. As the common parent, Taxpayer 2 was making the election on behalf of all the entities included in the consolidated return.	Y	Y

Attachment D

Date Filed	Inc Yr	Taxpayer Filing(s):	W/E Contract Attached	Common Parent Election?
3/15/96	Jun-95	Taxpayer 1 filed a return on a separate company basis and did not elect water's-edge.	N	
3/15/96	Jun-95	Taxpayer 2 filed a return on a separate company basis and did not elect water's-edge.	N	
4/15/96	Jun-95	Taxpayer 3 filed a return computing California taxable income on a combined basis and electing water's-edge. The combined report included the above two corporations.	Y	Y

Attachment E

Date Filed	Inc Yr	Taxpayer Filing(s):	W/E Contract Attached	Common Parent Election?
4/12/95	Jun-94	Taxpayer 1	N	
4/15/95	Jun-94	Taxpayer 2	N	
4/15/95	Jun-94	Taxpayer 3	N	
<p>Each of the above taxpayers filed short period returns on a separate company basis. Prior to IYE 06/94, each of these taxpayers had a December 31 income year end.</p> <p>Neither of these taxpayers made a water's-edge election with their original returns.</p>				
9/15/95	Dec-94	Taxpayer 4 filed a 12-month return computing its California taxable income on a separate company basis. No water's-edge election was made with this return.	N	
10/15/95	Dec-94	Taxpayer 5 filed a 12-month return computing its California taxable income on a combined basis. The combined report included the income and factors of each of the above taxpayers. Taxpayer 5 attached three separate Forms 100-WE: The first Form 100-WE was entered by Taxpayer 6 and covered the following entities:	Y	Y
		Taxpayer 5 Taxpayer 6 Taxpayer 7 Taxpayer 1	Y	Y
		The second Form 100-WE was entered by Taxpayer 8 and covered the following entities: Taxpayer 8 Taxpayer 2 Taxpayer 1 Taxpayer 3 Taxpayer 9	Y	Y

Attachment E (Continued)

W/E Common

Date Filed	Inc Yr (Continued)	Taxpayer Filing(s):	Contract Attached	Parent Election?
		The third Form 100-WE was entered by Taxpayer 4. It was just for this entity.	Y	N
10/16/95		Each of the above contracts was signed on Monday, October 16, 1995.		
9/18/97		Audit made the following observations: For the taxpayer which filed separate short period returns: "These can be viewed as invalidating the election for the short period but allowing the election after the short period." However, since The Taxpayer 4 filed a full 12-month return and did not elect water's-edge, the election is considered invalid for the entire period.		

Attachment F

Date Filed	Inc Yr	Taxpayer Filing(s):	W/E Contract Attached	Common Parent Election?
12/15/89	Mar-89	<p>Taxpayer 1 filed a return on a separate company basis and did not elect water's-edge. The return was filed pursuant to an extension to January 1, 1990.</p> <p>Taxpayer 1 used a 1988 Form 100. In that form, it checked no to letter D on the face of the return. Question D asks the taxpayer if it determined its income pursuant to a water's-edge election.</p>	N	
1/15/90	Mar-89	<p>Taxpayer 2 filed a return on a combined basis and elected water's-edge. The return was filed pursuant to an extension to January 1, 1990.</p> <p>Taxpayer 2's return included: Taxpayer 1 Taxpayer 3 Taxpayer 4 Taxpayer 5 Taxpayer 6 Taxpayer 2</p>	Y	Y
3/15/92	Mar-89	<p>Taxpayer 1 filed an amended return requesting a refund for the taxes paid with its original return filed on December 15, 1989. Taxpayer 1 stated that it was a member of the unitary group which filed a combined return with Taxpayer 2. The income of Taxpayer 1 was included the combined report filed by Taxpayer 2 on January 1, 1990. Taxpayer 1 also stated that "The filing of a separate California return for Taxpayer 1 was erroneous."</p>		

Attachment G

Date Filed	Inc Yr	Taxpayer Filing(s):	W/E Contract Attached	Common Parent Election?
9/15/90	Dec-89	Taxpayer 1 filed a return reporting California taxable income on a separate company basis and did not elect water's-edge.	N	
10/15/90	Dec-89	Taxpayer 2 filed a tax return computing California taxable income on a combined basis. The combined report included Taxpayer 1. Since Taxpayer 1 had already filed its original return and did not elect water's-edge, is invalid.	Y	Y

Attachment H

Date Filed	Inc Yr	Taxpayer Filing(s):	W/E Contract Attached	Common Parent Election?
5/10/90	Nov-89	Taxpayer 1 filed a return computing its California taxable income on a separate basis. This return made no indication of a water's-edge election.	N	
7/15/90	Sep-89	Taxpayer 2 filed a return computing California taxable income on a combined basis. The combined report included Taxpayer 2, Taxpayer 1, and a non-California taxpayer, Corporation 3. This return stated that water's-edge election was being made for both Taxpayer 1 and Taxpayer 2. Two separate contracts were attached to this return: one for Taxpayer 1 and Taxpayer 2.	Y	N

Attachment I

(Note this is the fact pattern of two invalidations.)

Date Filed	Inc Yr	Taxpayer Filing(s):	W/E Contract Attached	Common Parent Election?
6/10/96	Sep-95	Taxpayer 1 filed a return reporting California taxable income on a separate company basis and did not elect water's-edge.	N	
6/15/96	Aug-95	Taxpayer 2 filed its own return and computed California taxable income on a combined basis that included Taxpayer 1 and Taxpayer 3 and its subsidiaries. This taxpayer made its own water's-edge election.	Y	N
7/15/96	Sep-95	Taxpayer 3 and subsidiaries filed a tax return computing California taxable income on a combined basis. The combined report included Taxpayer 1 and Taxpayer 2.	Y	*

* Taxpayer 3 attached a common parent election. However, the common parent election made by Taxpayer 3 included its subsidiaries, but it did not include Taxpayer 1 or Taxpayer 2.

Attachment J

Date Filed	Inc Yr	Taxpayer Filing(s):	W/E Contract Attached	Common Parent Election?
3/15/91	Dec-90	Taxpayer 1 file a return on a separate company basis and did not elect water's-edge.	N	
10/15/91	Dec-90	Taxpayer 2 filed a combined report. The income and factors of Taxpayer 1 were included in this combined report. In the combined report filed by Taxpayer 2, two separate Forms 100-WE were attached: one for each taxpayer.	Y	N

Attachment K

Date Filed	Inc Yr	Taxpayer Filing(s):	W/E Contract Attached	Common Parent Election?
9/15/93	Dec-92	Taxpayer 1	N	
9/15/93	Dec-92	Taxpayer 2	N	
Each of these corporations filed returns on a separate company basis and did not elect water's-edge. On the original return they checked no on question E on the front of Form 100, indicating that they were not determining their income pursuant to a water's-edge election.				
10/15/93	Dec-92	Taxpayer 1	Y	Y
10/15/93	Dec-92	Taxpayer 2	Y	Y
Each of these corporations filed amended returns on a water's-edge basis. The corporations made the water's-edge election by attaching a contract Form 100-WE to the amended returns.				
The following members of the unitary group filed separate returns but on a combined basis. Each of these entities attached a copy of the water's-edge contract entered by the common parent corporation:				
10/15/93	Dec-92	Taxpayer 3	Y	Y
10/15/93	Dec-92	Taxpayer 4	Y	Y
10/15/93	Dec-92	Taxpayer 5	Y	Y
10/15/93	Dec-92	Taxpayer 6	Y	Y
10/15/93	Dec-92	Taxpayer 7	Y	Y
10/15/93	Dec-92	Taxpayer 8	Y	Y
10/15/93	Dec-92	Taxpayer 9	Y	Y
10/15/93	Dec-92	Taxpayer 10	Y	Y
10/15/93	Dec-92	Taxpayer 11	Y	Y